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THE SUQUAMISH TRIBE

PO Box 498 Suquamish, WA 98392-0498

September 14, 2012

Jeffry Rodin
U.S. EPA, Region 10
1200 Sixth Avenue, ste 900 (ECL-116)
Seattle WA 98101

Re: Final Engineering Evaluation / Cost Analysis, Bremerton Auto Wrecking Landfill – Gorst Creek
(April 2012)

Dear Mr. Rodin:

The Suquamish Tribe appreciates the opportunity to provide comments on the Final Engineering Evaluation / Cost Analysis (EE/CA), Bremerton Auto Wrecking Landfill – Gorst Creek. The Suquamish Tribe is pleased that the EPA has conducted additional sampling and completed an EE/CA. This site has been a concern for the Suquamish Tribe, Kitsap County, City of Bremerton, the Bremerton-Kitsap Health Department, the Washington Department of Ecology (Ecology) and EPA since the 1990s.

The Suquamish Tribe is a federally recognized Indian Tribe and pursuant to the 1855 Treaty of Point Elliott the Tribe reserved the right to fish and gather shellfish at its “usual and accustomed” (U&A) fishing grounds and stations in Puget Sound which includes almost all areas of the Puget Sound along Kitsap County’s marine shoreline. Therefore, land use decisions and actions within the proposed area of discussion will potentially impact the Suquamish Tribes “Usual and Accustomed Fishing Area.” The Tribe seeks protection of all treaty-reserved natural resources through avoidance of impacts to habitat and natural systems. The Tribe not only has the right to fish but also the right to preserve habitat and maintain its treaty reserved resources. Thus, our standard for review is based on the protection and maintenance of resources as well as the Tribes right to fish and harvest.

The Suquamish Tribe has taken a leadership position in efforts to protect, restore, and enhance the marine waters of Puget Sound to ensure protection of the Tribe’s treaty and cultural resources. The Suquamish Tribe has traditionally harvested and consumed fish and shellfish from Sinclair Inlet and Gorst Creek (including its associated tributaries) and intends to do so in the future. Risk management decisions should be protective of tribal rights to access and harvest and should not limit or restrict future expression of those rights. As a federal trustee of tribal treaty-reserved resources, the Environmental Protection Agency has the responsibility of ensuring that tribes have the ability to exercise their protected treaty rights.

The Gorst Creek watershed supports runs of Chinook, coho, and chum salmon as well as steelhead and cutthroat trout. Sockeye are occasionally observed although it is unknown whether they are of local origin. The lower mainstem of Gorst Creek has historically supported heavy spawning activity by chum salmon and habitat downstream supports coho salmon spawning and rearing (Jon Oleyar, Suquamish Tribe). Cutthroat trout have been observed directly below the landfill by Washington Department of Fish and Wildlife (WDFW)

biologists. The headwaters are in good condition although the landfill has impacted areas in the vicinity of SR-3 (Kitsap Peninsula Salmonid Refugia Study, 2000). The stream was put into a culvert and the landfill created over the culvert. Both contaminants and debris are being deposited in the stream reaches downstream of the landfill.

The Suquamish Tribe operates two Chinook rearing ponds and yearling fall Chinook raceways within the lower mainstem. This program was established in 1981 as a cooperative effort with WDFW, the City of Bremerton, and the Poggie Club to provide salmon for both Tribal and sport harvest (Salmonid Habitat Limiting Factors, 2000).

In 1999, the City of Bremerton was awarded a \$386,000 Salmon Recovery Funding Board (SRFB) grant to remove 750 feet of concrete channel and restore over 1000 feet of meandering stream channel. This was the first SRFB project awarded to East Kitsap WRIA 15. Former Bremerton Mayor Glenn Jarstad promoted a long-term plan to purchase all the properties downstream of this project to restore the entire lower 0.8 miles of Gorst Creek (Salmonid Habitat Limiting Factors, 2000). These efforts continue today with members of the Jarstad family and the current Mayor of Bremerton Patty Lent. The selection of a sub-standard remedy will be in direct conflict with these habitat restoration efforts. We have reviewed the material provided and have the following comments/concerns pertaining to the cleanup site referenced above.

Consultation

The EPA Region 10 Tribal Consultation Procedures for Non-Time Critical Removal Actions state that "...EPA expects to fully implement the tribal consultation process when EPA actions or decisions may affect tribal interests." The Tribe appreciates the opportunity to provide comments on the draft EE/CA, however there was no prior consultation for the development of the recent sampling and analysis plans, the development of the streamlined human health and ecological risk assessments, nor the development of cleanup action alternatives considered in the EE/CA. The Tribe requests consultation throughout the decision-making process on this Non-Time Critical Removal Action, including the refinement of the removal action objections and risk assessments, modification and consideration of additional cleanup alternatives, and the review of the draft Action Memorandum.

Removal Action Objectives

The removal action objectives for the Gorst Landfill site provide for hydraulic conveyance, appropriately cover waste and stabilize slopes. The Tribe requests consultation on these removal action objectives to fully address impacts to Treaty-reserved resources and potential risks to human health.

Identification and Development of Removal Action Alternatives

The approach and conclusions in these documents fail to support that the remedy selection is protective of human health and the environment. The proposed alternative (Alternative 4) provides for jacking 880 feet of new 32" diameter pipe through the landfill. Both the culvert width and length make it impossible to fish at all life stages and will not maintain natural geomorphic processes/ecological functions (movement of sediment and wood).

When considering alternatives likelihood of long term success should be fully addressed. A culvert is a temporary solution as culverts eventually fail which is the exact reason that corrective action is being initiated. Why is EPA merely suggesting culvert replacement, a solution that does not provide a long term remedy? Debris removal will have a larger predicted cost but would be less likely to require follow-up actions when an

area of the site fails. If the culvert fails (which it will either get plugged or rust and collapse) who is responsible for repairs? The City of Bremerton, Kitsap County, and Washington State Department of Transportation have already said it is not their responsibility. In addition, it is not clear what the stability of this remedy would be if a significant seismic event were to occur.

The Suquamish Tribe does not support Alternative 4 as it clearly puts a higher importance on cost than protection of human health and the environment. As communicated verbally to Mr. Rodin during a meeting on June 26, 2012, the alternative preferred by the Suquamish Tribe (as well as WDFW) is complete removal of the landfill material. Although this option is more expensive than the pipe jacking alternative it fully addresses a long term, protective solution for habitat, water quality, and human health.

An alternate solution (Alternative 3) that was also discussed included re-routing the stream around the landfill (and the landfill would be partially removed and/or stabilized) and it was my understanding that the City of Bremerton's consultant (and EPA) were going to follow up with the adjacent landowner and /or other potential knowledgeable parties regarding potential easement and feasibility. I have not heard anything to date concerning this alternative.

There is no meaningful discussion of monitoring in any of the alternatives that leave landfill material in place.

Appendix C – Streamlined Human Health Risk Assessment

There is little to no integration of the risk assessments into EE/CA report. The Tribe cannot support the level of uncertainty in the risk calculations in the HHRA that arise from data gaps and flaws related to surface water and sediment sample results (too few samples), the lack of clearly identified exposure parameters, and the lack of cumulative cancer risk calculations. It is not clear why the EPA industrial worker RSL being used when most of the surrounding area is residential (urban reserve) and Gorst Creek is such a crucial element in Tribal fishery activities.

The risks to Tribal populations are not clearly presented. Exposure scenarios should be protective of tribal treaty rights to fish and harvest. Gorst Creek is within the U&A of the Suquamish Tribe. Tribes have treaty protected rights to access and harvest all types of fish and shellfish. Furthermore, there is no evaluation of a child's exposure to either sediment or surface water and no analysis of dioxin/furans.

The report erroneously states that there is no worker contact of the surface waters. This is incorrect. County, WDFW and Suquamish employees are in contact with the waters when conducting stream surveys (this is a fish bearing stream). In addition the report also states that no fish are taken from Gorst Creek. This is also incorrect, county residents illegally take fish from the stream and fish taken at the hatchery for spawning are given to tribal members, employees, residents, and the food bank.

Appendix D Streamlined Ecological Risk Assessment

There is little information on the effects of contaminants on the environment or any discussion of existing conditions and the impacts on (reduction of) habitat. There are many unsupported conclusions that either require the addition of supporting data or are erroneous and need to be removed. For example: Page 1-14 – Risks to aquatic dependent wildlife that may forage in Gorst Creek appear to be minimal. There does not appear to be data that supports this statement. This statement seems contradictory to information in the streamlined ecological risk assessment that states: "Based on these investigations, DDT, DDE and PCB's in sediment in Gorst Creek downstream from the site appeared to be of greatest concern from an ecological standpoint, sediment concentrations of these chemicals exceeded their respective probably effect concentration

September 14, 2012

Jeffry Rodin

Page | 4

indicating that the concentrations were great enough to adversely affect benthic invertebrates.”

Two of the four species used for the ecological risk evaluation were migratory. Use of migratory species is not protective, as using an exposure duration of less than 1 year is not representative of permanent residents and significantly underestimates risk. The receptors selected are representative of multiple species and should also represent the most sensitive species that could potentially be present. Bioaccumulation was discussed in a very limited manner (earthworms) and more detailed discussion is needed. Additional discussion is warranted to evaluate risk to higher trophic levels.

Please explain how direct sediment exposure is a “minor” exposure pathway for fish, amphibians and other aquatic organisms. Basing a “no effect” on a mortality endpoint significantly underestimates potential impacts.

Under ESA, any adverse effect must be considered and in most cases will be judged as deleterious for individuals (including behavior, immunocompetence etc.). In addition, were the species selected for the bioassay appropriate and representative of those present in Gorst Creek? Even closely related species can exhibit widely varying responses to one toxicant under identical conditions.

No surface water samples were taken from the stream in July of 2011. One would assume that a seasonal stream would likely be dry in July/Aug. Why was this timeframe selected for sampling?

At this time the Suquamish Tribe does not support the proposed alternative as it perpetuates an impassible barrier to fish and does not alleviate potential risks to human health and the environment. We look forward to continuing cooperative work with EPA, the City of Bremerton and stakeholders on an appropriate remedy. As per the email sent on August 30, 2012 the Tribe requests a government to government meeting to discuss these comments and EPA’s response to comments. I can be contacted at aosullivan@suquamish.nsn.us if you have questions or would like to discuss the concerns stated above.

Sincerely,



Alison O’Sullivan

Biologist, Suquamish Tribe